IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 3RD NOVEMBER 2006 / 12TH KARTHIKA 1928

WP(C).No. 10777 of 2006(G)

PETITIONER:

HARRY CLEETUS,
LECTURER SELECTION GRADE, DEPARTMENT OF ZOOLOGY,
ST. ALBERT'S COLLEGE, ERNAKULAM.

BY ADV. SRI.BABU VARGHESE

RESPONDENTS:

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1. THE MANAGER,
ST. ALBERT'S COLLEGE, ERNAKULAM.

2. THE MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY ITS REGISTRAR,
PRIYADARSHINI HILLS P.O., KOTTAYAM.

3. THE STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY TO GOVT.,
DEPARTMENT OF HIGHER EDUCATION, GOVT.SECRETARIAT,
THIRUVANANTHAPURAM.

4. DIRECTOR OF COLLEGIATE EDUCATION,
VIKAS BHAVAN, P.M.G. JUNCTION, THIRUVANANTHAPURAM.

5. THE DEPUTY DIRECTOR OF COLLEGIATE
EDUCATION, ERNAKULAM.

R1 BY ADV. SRI.P.GEORGE WILLIAM
R2 BY ADV. SHRI V.A. MUHAMMED
R3 TO R5 BY SHRI A.J. VARGHESE, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1-TRUE COPY OF THE ORDER OF APPROVAL ISSUED TO THE PETITIONER ON HIS PLACEMENT AS SENIOR GRADE LECTURER DATED 23.3.1996

EXT.P2-TRUE COPY OF THE ORDER OF APPROVAL GRANTED TO THE PETITIONER BY THE UNIVERSITY ON HIS PLACEMENT AS SELECTION GRADE LECTURER DATED 19.8.2004

EXT.P3-TRUE COPY OF THE GO DATED 24.12.96

EXT.P3(A)-TRUE COPY OF THE UNIVERSITY ORDER DATED 19.12.2005 ON COVERING OF BROKEN PERIOD OF SERVICE.

EXT.P4-TRUE COPY OF THE LETTER SENT BY R5 DATED 29.3.2006

EXT.P5-TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE R5 DATED 31.3.2006.\

EXT.P6-TRUE COPY OF GOVT. LETTER DATED 28.5.1999 TO THE DIRECTOR OF COLLEGIATE EDUCATION.

// TRUE COPY//

A. K. Basheer, J.

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Dated this the 3rd day of November, 2006.

JUDGMENT

Petitioner who is working as a Selection Grade Lecturer in the Department of Zoology in the college under the management of respondent No.1, has preferred this writ petition praying for issuance of a writ of certiorari to quash Ext.P4 order by which the claim of the petitioner for arrears of salary has been rejected. In Ext.P4 order respondent No.4 took the view that the broken periods of service rendered by the petitioner could not have been reckoned for granting promotion to him in view of the order issued by the Government in this regard (G.O.(P) No.171/99/H.Edn. Dated 21.12.1999). Petitioner prays that it may be declared that he is entitled to get arrears of salary in the promoted post with effect from July 27, 1998 on the strength of Exts.P2, P3 and P3(a) orders.

2. It is not in dispute that petitioner was initially appointed in the college in a leave vacancy for one year starting from November 24, 1986 to November 23, 1987. Thereafter, he was again appointed from November 24, 1987 to February 29, 1988. He had again served in the college in another short vacancy from June 1, 1988 to July 1, 1988. He got regular appointment in a permanent vacancy with effect from November 28, 1988. It is also admitted by respondent No.5 in the counter affidavit that petitioner was promoted as Senior Scale Lecturer with effect from July 21, 1995 reckoning the broken periods of service from November 24,

1987 to February 29, 1988 and also from June 1, 1988 to July 1, 1988. On completion of 8 years of service in the category of Lecturer, petitioner was promoted as Senior Scale Lecturer. His promotion was approved by respondent No.4 as revealed from Ext.P1. The Syndicate of the University had also approved the promotion of the petitioner as Lecturer (Senior Scale) as could be seen from Ext.P2.

3. It is contended by the petitioner that the Government in Ext.P3 order dated December 24, 1996 had made it clear that teachers who were appointed in temporary vacancies prior to March 13, 1999 and who had been regularised against permanent vacancies thereafter, can be considered for University Grants Commission benefits and that their previous service including broken service can be counted for calculating qualifying service for placement. Thereafter, on December 19, 2005 the Mahatma Gandhi University had ordered that all the broken spells of service prior to 1.1.1996 which were approved by the Universities concerned and the respective Deputy Directors of Collegiate Education, shall be reckoned as qualifying service for Career Advancement as Lecturers, Senior Scale/Selection Grade. A copy of the above order has been produced as Ext.P3 (a). But when the Principal of the college forwarded the claim made by the petitioner along with some other teachers for arrears of salary in the scale of pay of Selection Grade Lecturer, respondent No.5 had informed the Principal that the petitioner's claim cannot be considered. The communication issued by respondent

No.5 has been produced as Ext.P4 which is impugned in this writ petition.

4. As mentioned earlier, respondent No.5 in his counter affidavit has admitted that petitioner had worked in short spells prior to January 1996. It is also admitted that petitioner was promoted as Lecturer (Selection Grade) with effect from July 27, 1998 reckoning the total service of 11 years from November 24, 1986 including broken periods of service. The fact that the University had approved the promotion of the petitioner as Selection Grade Lecturer is also admitted by respondent No.5. But it is the case of respondent No.5 that Selection Grade was granted to the petitioner by mistake. In terms of paragraph 7.7 of the Government Order dated 21.12.1999 broken spells of service for less than one year cannot be reckoned as qualifying service for promotion with effect from July 27, 1998. It is further averred that the Government in its letter No.5617/C3/06/H.Edn. Dated 20.3.2006 has stated that reckoning of broken spells of service prior to1.1.1996 as qualifying service for career advancement as Lecturer Senior Scale/Selection Grade is against clause 7.7. of the Government Order dated 21.12.1999. It appears that the Government had issued the above clarification in response to the order issued by the Mahatma Gandhi University (Ext.P3(a)).

5. It is pertinent to note that petitioner was admittedly promoted as Senior Grade Lecturer with effect from July 21, 1995 and as Selection Grade Lecturer with effect from July 21,1998. Both these promotions were approved by the University and the Directorate. It is also pertinent to note that petitioner had been

paid salary attached to the post of Selection Grade Lecturer ever since his placement in July 1998. The objection was raised only when petitioner had claimed arrears of salary with effect from July 1998. In this context, petitioner has placed reliance on Ext.P6 order issued by the Government in which it has been clarified that "appointments in private colleges against leave vacancies cannot be considered as provisional or temporary."

6. It is the contention of the petitioner that petitioner was appointed against the short term vacancies after a due process of selection conducted by the committee constituted for this purpose. The above assertion has not been denied by the respondents. More importantly, respondent No.5 has admitted that the broken spells of service were approved by the Directorate and the University. Petitioner was placed in the Senior Grade and Selection Grade on completion of the requisite periods of service. Both the placements were approved also by the Directorate. In that view of the matter, respondents 4 and 5 cannot be heard to say that petitioner would not be entitled to get arrears of salary in the scale of Selection Grade Lecturer starting from July 1998. Respondents have not produced the two orders of the Government on which reliance has been placed. In any view of the matter, if the Directorate feels that some clarifications have to be obtained either from the University or from the Government in this regard, it will be open to them to pursue the matter. But on the face of the materials on record, I have no hesitation to hold that the prayer made by the petitioner is liable to be allowed.

Ext.P4 to the extent it rejects the claim of the petitioner is quashed. The writ petition is disposed of with a direction to respondent No.5 to countersign the bill for arrears of salary submitted by the petitioner for the period starting from July 27, 1998 if there is no other legal impediment. Arrears of salary shall be disbursed to the petitioner within two months from the date of receipt of a copy of this judgment on his executing an appropriate bond in this regard undertaking to repay the same if it is ultimately found that he is not entitled to receive it. If any clarification is found necessary, it will be open to respondent No.4 and/or respondent No.5, to approach the University or the Government, as the case may be. But this consultation process shall be completed within two months from the date of receipt of a copy of this judgment.

(A.K. Basheer)
Judge.

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